IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8691 OF 2004

Shivaji Dhondiram Mahamuni (Sutar) ...Petitioner

Versus

Ramesh Dhondiram Mahamuni & Ors. ...Respondents

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Mr. S.G. Deshmukh, counsel for Petitioner

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CORAM: B. H. MARLAPALLE, J.

DATED: 2ND FEBRUARY, 2005

P.C.:-

1. Heard Mr. Deshmukh, the learned counsel for the petitioner.

2. In Misc. Application No. 129 of 2000 filed for probate the present petitioner is the opponent who has filed a reply at Exh.15 and contended that the last Will of the deceased Testator Shri. Dhondiram Govind Sutar purportedly executed on 8.11.96 was not signed by the said Testator and it did not bear his signature. Accordingly, the issues have been framed at Exh.17 and thus, the burden is cast on the applicant to prove the said Will including the signature of late Dhondiram Sutar.

3. On or about 2.7.2004 the petitioner opponent

moved an application at Exh.46 in Misc. Application 129 of 2000 and prayed for sending admitted signatures of the deceased Testator and the Will deed to the Government handwriting expert for his opinion. This application has been rejected by the impugned order dated 6.8.2004.

4. The learned IInd Joint Civil Judge, Senior Division, at Sangli noted that the original applicants have already closed their evidence on 18.6.2004 and have filed pursis to that effect. At the same time, the opponent was not under obligation to prove the execution of the Will and the issues framed at Exh.17 did take into consideration, the contentions raised by the present petitioner in his say at Exh.15 and thus the burden has been cast on the original applicant to prove the Will including the signature. Thus, the reasoning given by the Trial Court cannot be termed as perverse or grossly erroneous calling for interference in a petition under Article 227 of the Constitution. Hence, the petition is rejected summarily.